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SUMMARY

The SBH proposed findings impose a burden on a cost estimation and reasonable assurance of funds that has never been required by the Commission.

As shown in the Bryan Reply, the SBH findings reflect a distorted view of the record and result in exaggerated cost estimates.

The record evidence shows that the equipment and operating cost figures argued by SBH have no validity. Bryan has shown that his cost ascertainment effort was reasonable and that he has continually had a commitment of funds from Greene County Bank.

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BEFORE THE

Federal Communications Commission

COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Washington, DC 20554

In re applications of)	MM Docket No. 93-241
)	
DARRELL BRYAN)	File No. BPH-920109MA
)	
SBH PROPERTIES, INC.)	File No. BPH-920123MD
)	
For a Construction Permit)	
for a New FM Station on)	
Channel 276A (107.3 MHz))	
in Tusculum, Tennessee)	
To: The Hon. John M. Frysiak		
Administrative Law Judge		

REPLY FINDINGS OF DARRELL BRYAN

Darrell Bryan ("Bryan"), by his attorney, hereby submits his reply to the Proposed Findings Of Fact And Conclusions Of Law filed by SBH Properties, Inc. ("SBH"). As shown in the Bryan proposed findings and conclusions of law, Bryan has met his burden of proof under the added financial issues by demonstrating that he was financially qualified at the time of his certification and is presently financially qualified. The SBH findings of fact and conclusions are based on an erroneous view of what is required of an applicant to ascertain costs of construction and operation, and what is required to establish reasonable assurance. In support whereof, the following is shown:

Preliminary Statement

1. The SBH findings and conclusions attacking Bryan's costs of construction and operation, and the reasonableness of the steps taken by Bryan to ascertain those costs, impose a cost ascertainment standard that is not required by the Commission. SBH continually refers to Bryan's equipment budget as a "proposal", and in discussing various items in the budget infers that each of the items in the budget constitutes a fixed and binding proposal to purchase that specific brand of equipment. SBH has submitted a lengthy discussion of each item. The problem with SBH's entire approach to the budgeting process is that its basic assumption is erroneous. SBH assumes that the Commission's requirement of a reasonable effort to ascertain costs requires preparation of a detailed equipment proposal from which an applicant cannot deviate. SBH also attacks the Greene County Bank as a source of funds on various grounds.

2. The problem with the SBH approach to cost ascertainment is that Bryan has prepared a more detailed budget than is necessary; the Commission does not require that an applicant have written documentation as to cost estimates. In *The Baltimore Radio Show, Inc.*, 4 FCC Rcd 6437, 6444 (Rev. Bd. 1989), the Review Board made it clear that the written documentation requirement of *Las Americas Communications, Inc.*, 1 FCC Rcd 786, 788 (Rev. Bd. 1986), "pertained only to the showing necessary to establish the reasonable assurance of the availability of funds". This position is in line with the Commission's acknowledgement, when it revised Form 301 in 1981 to delete the need to describe proposed equipment, that "[i]t is our experience that a proposed operation is rarely effectuated exactly as itemized in Section III. In that event,, stringent itemization requirements do not appear relevant". *Revision of Form 301*, 50 RR 2d 381 (1981).

3. Financial certifications have been accepted in cases where a detailed budget such as Bryan's did not exist. In *The Baltimore Radio Show*, supra, the Review Board approved a cost ascertainment effort where cost estimates were formulated by the applicant in a telephone discussion with counsel. In *Welch Communications, Inc.*, 8 FCC Rcd 1285 (1993), the Commission reversed the Review Board and found an applicant financially qualified even though the Board had found (7 FCC Rcd 4542 at para. 8) that the applicant had made only informal calculations about how much it would cost to build and operate the station based on his experience, had "merely jotted some numbers down on legal pads, had no written budget to submit to the lender and could not produce the "jottings" at hearing. It is also clear that the Commission does not require cost estimates to be based on detailed equipment proposals from equipment companies. In fact, in evaluating an applicant's finances, the Commission will credit cost estimates as long as they are not "so far below average or beyond a range of reasonableness"....". *Kaye - Smith Enterprises*, 98 FCC 2d 675, 677 (Rev. Bd. 1984).

4. The SBH proposed findings and conclusions are 78 pages long; SBH makes findings on so many irrelevant points and makes so many findings that represent a selected reading of the record that one is reminded of the statement by President John Kennedy which the Review Board quoted in *Fox Television, Inc.*, 8 FCC Rcd. 3583, 3584 fn9 (Rev. Bd. 1993) referring to the admonition about looking for fire when there is a good deal of smoke that "sometimes, behind the smoke, is a smoke-making machine".

Bryan Satisfied His Burden of Proving the Basis for, and the Reasonableness of, His Cost Estimates for Construction and Operation

Equipment and Construction Costs

5. The efforts by Bryan to ascertain equipment and construction costs are set forth in Bryan's proposed findings at paragraphs 5-10. SBH asserts that Bryan improperly applied the discount offered by BSW. However, the record shows that the BSW catalog itself states that all of its equipment is routinely discounted below manufacturers' list prices and that further discounts are available. Bryan clearly priced a group of equipment. Bryan's testimony is that in his discussions with BSW they said that a 20-30% discount would apply. Bryan Ex 8, p. 6. SBH asserts that the Bryan equipment costs are low and insists that the prices it has obtained are what Bryan will have to pay for various items of equipment. However, the only evidence offered by SBH on the cost of equipment is the testimony of William Seaver, who has no engineering background, and who merely refers to selected pages from partial boilerplate equipment sales proposals which are attached. The SBH equipment sales proposals do not establish what an applicant has to pay for equipment; they only show that one can pay more than necessary if expensive equipment is selected. Mr. Seaver admitted that he only obtained boilerplate proposals showing list prices which were generated from the companies' computers and the acknowledged that no discounts are reflected. Bryan submitted the testimony of consulting engineer, Richard Mertz. The significance of the Mertz testimony is that it is the only unrebutted expert testimony in the record on equipment costs, and it demonstrates that the proposed FM station can be constructed today within the Bryan budget utilizing all new equipment. Mr. Mertz provided two detailed estimates which differ only in the cost for main transmission line. One proposal shows

a total cost of \$101,824.56 and the other a cost of \$104,051.97. Ex. 9, p.10 and p. 12. Mr. Mertz testified at hearing (Tr. 144-145) that the list prices shown for the Henry amplifier and QEI exciter had to be increased by \$3,000 due to an error in the price he was quoted. Even with the cost increase, the Mertz total cost with discount and with 7/8 inch transmission line is only \$6,035.56 (6.02%) higher than Bryan's total prepared two and a half years earlier. The total cost with 1 5/8 inch line (which Mertz stated is not necessary) is only \$8262.97 (7.9%) higher.

6. Transmitter/antenna costs. SBH continues to argue (p. 6-7) that Bryan proposed a 2 bay antenna in his application and cites to SBH Ex. 9 which is an engineering statement by the engineer who prepared the application. In that statement, the engineer states that "[n]o where in the application is a 2 bay antenna specified or required to be specified." He points out that the antenna sketch in the application "is a generic sketch of the relevant heights of the proposal". SBH states (P. 7) that "Mr. Lysiak's Engineering Statement constitutes the only evidence of record regarding the possible transmitter output power/antenna/transmission line efficiency combinations capable of achieving the 6.0 kilowatt effective radiated power, proposed by Bryan. On the contrary, Mr. Mertz testified about the transmission system. He described the "rule of thumb" used by engineers to select the size of transmission line, and stated that the Henry transmitter for which Bryan had obtained a price from Hall Electronics operates with six kilowatts of power and would provide sufficient power for a four or six bay antenna. Bryan Ex. 9, p. 3. He agreed with Mr. Lysiak that the Bryan application never proposed a two bay antenna. SBH tries to create a problem about Bryan stating that he priced a six bay antenna because the exact transmitter/antenna configuration would be difficult to determine, and submits findings that Bryan did not get any estimates for a "transmission system" (transmitter, transmission line and

antenna) for a "system" utilizing a two bay, three bay or four bay antenna. However, the record shows that use of a two bay antenna is a concept created by SBH, and that Bryan understood that the final choice of antenna would be determined at the time of construction, and on the advice of Hall Electronics he utilized a cost for a six bay antenna which would cover the cost of antennas with a lesser number of bays, and he priced the Henry six kilowatt transmitter which Mr. Mertz made clear has sufficient power for four or six bays. Bryan Ex. 9, p. 3. SBH deplores the fact that Bryan did not get written equipment estimates in preparing his budget. Such estimates are not required. *The Baltimore Radio Show*, supra.

7. Tower cost. SBH questions (p. 5) the reasonableness of Bryan's original \$18,000 tower estimate. The record shows that Bryan discussed tower costs with an engineer who works at Hall Electronics who had installed towers and who gave Bryan a price in the middle to low range. Tr. 43, lines 22-25; Tr. 44, lines 1-4, line 17-18. The testimony in the record shows that Bryan has a firm proposal quotation from Walter Stone to construct a tower for \$16,500 using a Rohn 45G tower. SBH questions the validity of the Stone price. However, Mr. Stone gave a complete breakdown of the price showing his cost. In attacking the price, SBH ignores the fact that Stone is a local resident and would not have the travel costs out of town companies like World Tower face when sending a tower crew to Tennessee from an out-of-town location. SBH infers that Mr. Stone had doubts about the suitability of the Rohn 45G tower because he stated that he would check with Rohn before making the final order. SBH also partially quotes Mertz as stating that he never installed a Rohn tower and never recommended the use of one; however, they ignore the fact that Mertz stated (Tr. 111) that he was "familiar with them from other communications work, not broadcast" and when asked if had recommended Rohn for a 300 foot installation had

said (Tr. 112) that "I haven't personally but I know of engineers that have". In his written testimony, Mr. Mertz compared the larger World tower and the Rohn 45G tower and concluded that "[t]he larger tower specified by SBH is not necessary". Bryan Ex. 9, p. 5. The record shows that the extra cost to Bryan for the next size Rohn tower is only \$2397.00. On the question of Mr. Stone's expertise it should be remembered that in its reply to the Bryan opposition to the motion to add the financial issues, SBH asserted (SBH Reply, para. 8) that "Mr. Stone is not regularly engaged in the business of tower sales and has no apparent experience in this area and, accordingly, no expertise upon which to base any quote". This statement was based on a declaration by Mr. Seaver. The evidence in the record, complete with numerous examples of towers constructed (including photographs), shows that Mr. Seaver and SBH were completely wrong in the assertion about Mr. Stone just as they are wrong in the assertions about equipment costs. SBH now has changed its argument to complain that Mr. Stone never constructed a 300 foot tower. SBH questions the Stone tower quote by pointing (para. 35) to SBH Ex. 5 and the three price quotes Mr. Seaver obtained. SBH shows prices from Continental, RF Specialities, and Harris. It is significant that its own quotes show that there is nothing strange in the fact that there are differences between the Bryan price estimates and the SBH estimates because its own quotes show that there is a wide disparity in prices from different companies for a 300 foot tower, i.e., the Continental quote is \$26,996; the Harris quote is approximately 43% higher at \$47,500.

8. SBH also presents conclusions (para 115-16) that there is a problem of possible high wind speeds in the Tusculum area and presented a wind map from a tower catalog (SBH Ex. 16) which it claims shows the wind speed for most of Tennessee is 70 miles per hour and that the

area near the Smokey Mountains is designated as a "special wind region". . SBH mistakenly states (bottom of P. 66) that the wind speeds shown on the map are "basic, not peak, wind speeds". However, it should be obvious that there are not regular 70 mile per hour winds in Tennessee; although the map uses the term basic wind speed, it explains in Note 1 that "values are fastest-mile speeds at 33 ft. above ground" Mr. Mertz pointed out that the map itself states that: "Wind speeds indicated on the map are for reference only. Actual wind speed requirements must be determined based upon local conditions and must meet local building code requirements". Mr. Mertz stated that the special designation simply means that the conditions in that area have to be evaluated and that wind speed in that region could be higher or lower. Tr. 141-142. Mr. Stone who selected the tower size is local to the area. There is no record basis for the SBH conclusions that wind speeds in the area require a stronger tower than proposed by Bryan. There is no record evidence to support the SBH conclusion that the proposed tower is inappropriate and that a higher cost for a different tower must be used.

9. Miscellaneous equipment. The SBH approach to discussing Bryan's equipment estimation process is to attempt to dredge up any conceivable cost item and to highlight any items from the original budget that were omitted or which it asserts were too low and to pass over any items that were higher than current prices by insinuating without any record support that any lower figure is for a cheaper, less desirable product. SBH points out that Bryan estimates for certain items were omitted from the original budget such as FM modulation monitor, an RF amplifier, a second Parareflector antenna, connectors for the transmission line, mounting or grounding hardware, and monitoring speakers, and points out that Bryan testified that the original transmission line cost was in error as the result of a typographical error. Despite some errors and

omissions in the original budget, the detailed estimates provided by Mr. Mertz which include current prices for all of the missing items show that the total cost of constructing today is still well within the Bryan budget. SBH even makes a point of the need for fences around the tower and guy anchors which Mertz said (Tr. 122) could be inexpensive wooden fencing. SBH presents an argument about the use of microwave STL in view of line-of-sight problems; as shown in the Bryan proposed findings, the use of the AM studio building as the studio location was only recently considered by Bryan. Mr. Mertz showed in the supplemental exhibit Bryan Ex. 10 that the easy solution to the line-of-sight problem is the use of telephone lines.

10. In its discussion of the Mertz estimates, SBH states that "Mertz demonstrates only that a hypothetical station could be constructed in 1994", and asserts that Mertz has essentially put together the "cheapest package possible". SBH Concl., p. 58. SBH spends many pages pointing out that Mertz in some cases priced a different brand of equipment than proposed by Bryan. However, the Commission does not even require an applicant to prepare a written budget much less one which sets forth the brand name of every item of equipment. In view of this fact, the SBH arguments about whether Mertz priced the exact brand of equipment are meaningless. For example, in discussing turntables in para.105, SBH states without any basis that Mertz obviously proposed a less expensive turntable, but the Bryan budget specified \$1250.00 for two "Technics turntables" and Mr. Mertz has a price for two "Technics SL1200 turntables" of \$899.90; Bryan had a price of \$ 825.00 for one "EV microphone & Amp", Mertz has a price of \$495.00 for "EV Microphone & two Fostex amplified speakers". Bryan had an estimate of \$3,860 for a remote control unit described as "Gentner VRC Remote Control"; Mertz had an estimate of \$4,038 for a Gentner VRC-2000 with a command relay unit. SBH ignores the

obvious fact that some of the Mertz prices are lower and some are higher. The lower price for turntables could well be the result of the increase in the use of Compact disc players. SBH also argues that the new transmitter building estimate of \$3,800 from Walter Stone cannot be considered and that only the \$5,000 estimate in the original budget can be used.

11. The flaw in the SBH position about equipment cost estimates is that SBH believes that once an applicant has set forth a budget, it is the cost of the individual items that is important and not the overall cost. Thus, SBH argues that Bryan's burden is not to show that he arrived at a total construction and operating cost estimate that is within a zone of reasonableness, and that the station can be built within the budget; SBH claims that he must show that the current cost is based on the identical list of equipment. The argument makes no sense and is not supported by Commission precedent. Mr. Mertz testified that where different brand names were substituted, the equipment is equivalent. Further, the SBH assertion about the "cheapest package possible" is not supported by the record. For example, Mr. Mertz was specifically asked if the Ramsa mixing board is the lowest price model they make, and Mr. Mertz responded, "No, it's not. It's not the cheapest one they make". Tr. 149. Again, in discussing the QEI exciter to be used with the Henry power amplifier, Mr. Mertz stated that it was in the middle price range. Tr. 114.

12. Use of Existing Equipment. SBH discusses the fact that Bryan testified that he is relying on some of the equipment that is on hand at WSMG such as office furniture, studio generator and EBS equipment. SBH refers to the fact that equipment used in the operation of WSMG is subject to the bank lien under the earlier loan and asserts that because of the lien the equipment cannot be used for the FM station. The answer to the SBH assertion is that the

current lien is held by Greene County Bank, and the bank president testified (Bryan Ex. 6, p. 1) that the bank would not bar a sale of WSMG and that if there was any shortfall after applying the sale proceeds to the existing loan, the shortfall would be folded into the new loan. Mr. Bryan testified that much of the extra equipment was purchased by him personally and since it was not being used at WSMG he believed that it would not fall under the lien. He acknowledged that the UCC Financing Statement lists desks, chairs, etc., but made it clear stated that the office furniture he intended to use at the FM station was not what was listed in the UCC statement but was extra furniture being stored. Tr. 45-47. SBH asserts (para. 65) that Bryan "proposes to retain a significant amount of the equipment utilized in the operation of WSMG". There is no record basis for the assertion; the amount of equipment is not significant, most of it is not currently in use at WSMG, and the sale price of WSMG will not be affected. There is also no record evidence to support the conclusion that Bryan cannot use the extra equipment because of the existing lien. The SBH argument is ludicrous, especially in light of the testimony of Mr. Puckett and in view of the fact that the limited equipment to be shifted from the AM station for use at the FM station would fall under the new lien, and the bank would be fully protected. In view of the foregoing, it cannot be concluded that Bryan did not do a reasonable job of estimating costs in November/December 1991, when the new Mertz July 1994 estimates are so close and when it has been shown that the proposed station can be constructed in 1994 within his budget.

13. Estimates of Operating Costs. SBH argues about Bryan's operating cost estimates for electric, office machine rental, and telephone. The record shows that for the first 90 days Bryan allotted: \$300 for office machine rental for copier and fax, and that he had rented a copier in the past for less than he budgeted (Tr. 84-85); \$650 for phone service and some installation

which took into consideration that he already has telephone equipment on hand (Tr. 87); \$400 for office electric and \$1400 for transmitter electric which were estimated "high, you know, based on what it's cost me to operate" (Tr. 83); \$900 for health insurance even though he testified that he does not cover new employees for 90 days (Tr. 88); and \$675 for business insurance which is higher than he is currently paying for such insurance for the AM station (Tr. 89). On the issue of loan payments, it should be noted that Bryan did not attempt to evade normal and expected expense by reducing his repayment costs in his budget by specifying interest-only payments. He took a conservative approach and included two monthly payments of principal and interest in his budget and the payments are based on the conservative assumption that the entire \$175,000 (including the \$37,993.88 operating funds and the \$38,517.12 in surplus) would be borrowed at one time so that payments on the entire amount would be payable when it is obvious that he would not borrow the entire sum prior to operation. Obviously, Bryan would not borrow the 90 days operating expense money in advance or the full amount of the surplus. Bryan allotted two payments of \$1934.44 on the assumption that he would borrow the entire \$175,000 prior to the beginning of operations. Based on past experience with the bank, Bryan assumed there would be no payment during the first month. However, three monthly payments at \$1,934.44 based on the 1991 interest rate would total \$5,803.32; three current principal/interest payments would be \$5,637.00; three current interest-only payments on the full \$175,000 would be \$3,559.92. SBH concludes (para 124) that Bryan's 90 day operating cost figures must be increased by \$7,737.76 consisting of four loan payments based on repayment of the entire \$175,000. Any funds based on repayment of the amount of the entire loan commitment from the beginning exaggerates the amount of the loan repayments that would actually be payable. SBH asserts (Para. 124) that

Bryan's operating cost estimate of \$37,993.88 must be increased by \$8,712.76 to a total of \$46,706.64. As pointed out in the Bryan proposed findings, the SBH operating cost estimate is more than \$11,000 less than the original Bryan estimate, and would be more than \$20,000 less than the new operating cost total they attempt to impose on Bryan. It is ludicrous for SBH to argue that Bryan's estimates are far too low and that he must spend over \$46,000, when they only propose to spend approximately \$26,500 for their station.

14. SBH purports to provide (p. 72, Para. 124) a summary of cost and operation of the Bryan proposed station. The construction cost figures are based on columns that appear on pp. 63 - 64, which are identified as actual cost of equipment items 1 - 19, and items 20 - 26 from a column that appears on p. 69. The totals for items 1 - 19 are a combination of figures from SBH Ex. 5, Mertz's updated estimate, and Bryan's original budget. However, there is no basis for the use of the figures from SBH Ex. 5 because the validity of those figures has not been established. Mr. Seaver acknowledged his lack of expertise, yet SBH submitted no testimony of the cost of equipment from any equipment company representative or from any consulting engineer to support the figures in Exhibit 5. The attachment of selected pages from 1993 and 1994 sales proposals without any supporting testimony from the source of the proposals cannot be treated as reliable evidence in the face of the unrebutted expert testimony of Mertz. In addition, as has been shown, the SBH assertions on operating costs for the proposed station are ludicrous in view of the fact that SBH proposes to operate its station at a cost that is approximately \$20,000.00 less than the cost they are attempting to foist upon Bryan. Finally, the inclusion of the \$7,000.00 transmitter site and the intermediate STL site costs is inappropriate in view of the fact that Bryan has already procured the site for cash from OTHER FUNDS and

that Mertz has submitted testimony that the use of dedicated phones lines are a suitable STL substitute. An accurate summary of the record evidence of the cost involved in the Bryan proposal is:

Construction Costs:

Items 1 - 19	\$ 64,924.56* (* includes additional \$ 3,000, TR 144-145)
Items 20 - 26	<u>\$ 40,100.00</u>
	\$ 105,024.56

Operating Costs (Bryan Estimate): \$ 37,993.88

Total Costs: \$ 143,018.44

The above total cost reflects the use of 7/8 inch transmission line and the use of microwave STL links. An additional \$ 2,430.40 for the use of 1 5/8 inch line, when added to the above, increases the total to \$ 145,448.84. It should be noted that the above operating cost total retains the now moot site payments and the office rent payments which total \$2,925.00. In addition, when the dedicated phone loops are substituted for the microwave STL, it would not only eliminate the need for a relay STL but also the cost of the original STL package in Mertz's estimate in Ex. 9, yielding a savings of approximately \$ 5,000.00 from the total shown above. The total cost of the Mertz equipment estimate with 7/8 inch transmission line and phone loops is \$ 98,478.54.00, which is almost equal to the original Bryan equipment estimate, see Bryan Ex. 10, p. 7. The actual total cost of construction and operating the new station becomes \$138,026.94, versus the original total of \$136,482.88. In summary, Bryan has met the underlying substantive financial criteria and has shown that he has the ability to construct and operate the proposed facility for three months.

**The Record Establishes That Bryan Had and Still Has a
Firm Commitment to Lend From Greene County Bank**

15. In its findings and conclusions, SBH attacks the acceptability of the loan commitment from Greene County Bank. It asserts that Bryan did not have reasonable assurance of funds because (1) Bryan had not supplied the bank with a current financial statement, (2) the bank letter was defective because the letter included a pledge of stock as one of the security requirements and that requirement could not be fulfilled because Bryan filed as an individual applicant and that the later letter from the bank president stating that the stock pledge was not essential must be ignored because the letter must be judged on the date that it was written, (3) the repayment terms in the letter are not complete because the letter does not state whether the loan payments are to be made monthly or quarterly, (4) the understanding that payments could be interest-only for the first year was a special requirement that had to be addressed in the letter.

16. It is clear that nothing in the record suggests that the information made available to the bank was insufficient. The record shows that Bryan was an established customer of the bank, that the bank had financial statements on file, and that Bryan had a conference with the bank president during which they discussed (1) the total cost "to buy equipment and construct that station, and to operate for 90 days", (2) that Bryan wanted "extra funds for unforeseen contingencies", and (3) the total amount of money that he wanted to borrow. SBH asserts that Bryan did not have a balance sheet within 90 days of the application. However, Mr. Puckett, president of the bank, testified that Bryan's May 1991 balance sheet on file at the bank was reviewed during the discussions in November 1991 and that the bank was of the opinion that Bryan's financial condition had not changed. SBH Ex. 7, p. 19. In view of this fact, the existing

balance sheet was accurate within 90 days of the application filing; it was not necessary for Mr. Bryan to prepare a new balance sheet. The fact that Bryan who was applying as an individual did not prepare a statement of yearly net income has no bearing on whether he is financially qualified.

17. In *Short Broadcasting Co., Inc.*, 8 FCC Rcd 5574, 5575 para. 8 (Rev. Bd. 1993), the applicant was found to have met the Scioto standard where the applicant provided sufficient information about itself and its plans to satisfy the lender, even though applicant did not provide and lender did not want personal financial data. In the instant case, there is not only a bank letter. The testimony of the bank president was that the loan request was considered by the bank's loan committee and was approved prior to issuing the letter. "The Commission does not second-guess a bank's lending judgement". See *REM Malloy Broadcasting*, FCC 94R-14, released September 12, 1994; __ FCC Rcd __, __ para. 14 (Rev. Bd. 1994) citing *Liberty Productions, a Limited Partnership*, 7 FCC Rcd 7581 at 7584 (1992). Further, on the issue of repayment terms the letter states the term and the rate of interest. The fact that the letter does not specify whether payments are to be monthly or quarterly is not fatal. In *A. P. Walter, Jr.*, 68 RR 2d 1460, 6 FCC Rcd 875 (Rev. Bd. 1991), the Review Board found that in that situation where the bank letter met virtually all of the factors discussed in Scioto, the absence of a repayment period "is more akin to a technical deficiency, and certainly does not establish that the letter is a meaningless accommodation". Further, the SBH argument that the letter is defective because the availability of paying interest-only is not reflected in the letter is without merit. The record is clear that payment on an interest-only basis is optional for Mr. Bryan. In his testimony (Bryan Ex. 6, p. 1), the bank president stated that monthly interest-only payments

would be \$1,186.44 and that "[i]f Mr. Bryan opted to repay both interest and principal, the first year monthly payments would be \$1,879.00". It is clear that the 1991 bank letter did not have to include a special provision on the interest-only option because it was not part of his original budget. It is submitted that the loan commitment in the instant case is far stronger than in the most cases because here the loan request was approved by the bank's loan committee. The record in this case has established that Bryan had a reasonable assurance of funds at the time of certification, and that he still has assurance of those funds.

14. Sale of WSMG. SBH also discusses the sale of WSMG and opines that it is doubtful that the station can be sold for sufficient funds to retire the outstanding loan. It discusses the Burley Broadcasters "Statement of Assets and Liabilities"- SBH EX. 13 - (SBH findings, paras. 52-57) and then reaches the astonishing conclusion (SBH concl., paras 93-94) that the station can sell for no more than the asset valuation for WSMG of \$135,556.90 which appears on the statement. SBH points out that Bryan stated that "good will" would probably move to the FM with him and asserts without any basis that this will affect the sale price of WSMG. SBH has confused "good will" with "going concern value". The "good will" of WSMG developed by Bryan as a local owner/operator will obviously attach to him personally, but this does not detract from the station's "going concern value" because any buyer of the AM station will be purchasing a going concern. The SBH conclusion is a simplistic approach which completely ignores the basic fundamentals of station sales. SBH also ignores the fact that prices for radio stations are rarely based solely on the value of the hard assets. It is well known that station prices are based on the uniqueness of the license and such factors as market size and market location, multiples of cash flow and going concern value. When SBH talks of asset valuation it ignores the concept

of equipment depreciation which permits part of a station's income to be sheltered by a write-off of the cost of most assets, and ignores the fact that the statement itself shows accumulated depreciation of \$112,510. SBH even goes so far as to refer (para. 94) to a radio station sale in a different market in Tennessee as somehow being evidence of the value of WSMG. Aside from the weakness of a such an approach is the fact that it fails to include any information about the other stations such as cash flow or their market size. The fact is that according to the East Tennessee Development District, the 1993 population of Greene County where WSMG is located is 56,415 with retail sales of \$333,769.00; the 1993 population of Jefferson County where Jefferson City is located is 33,600 with retail sales of only \$149,634.00. Thus, there are considerable differences in the two markets which standing alone demonstrates why the comparison with WSMG has no validity. SBH asserts that the willingness of the bank to roll over any shortfall from the WSMG sale should have been in the bank letter. However, the bank letter simply discusses availability of funds for the new FM station; the possibility of any shortfall from the sale of WSMG is not relevant to availability of funds because the record contains the testimony of the bank president who made it clear that any shortfall would simply be rolled into the new loan. His testimony eliminates any argument that the availability of funds is affected by the potential sale of WSMG.

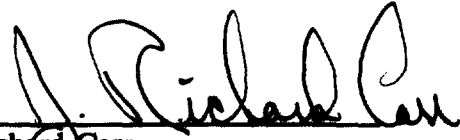
CONCLUSION

The record in this case contains substantial reliable evidence establishing that prior to certifying his qualifications in the application, Bryan had taken reasonable steps to ascertain the costs of construction and operation and had a reasonable assurance of funds, and, therefore,

certified in good faith. The record also contains probative evidence establishing that Bryan is currently financially qualified. The issues must be resolved in Bryan's favor.

Respectfully submitted,

DARRELL BRYAN

By: 
J. Richard Carr
His Attorney

October 17, 1994

P.O. Box 70725
Chevy Chase, Maryland 20813-0725

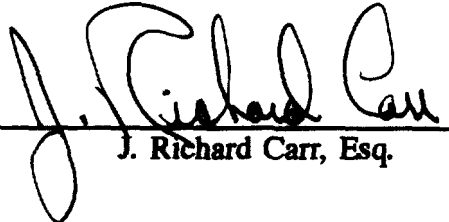
CERTIFICATE OF SERVICE

I, J. Richard Carr, hereby certify that copies of the foregoing "REPLY FINDINGS OF DARRELL BRYAN" were sent via first class mail, postage prepaid, or as otherwise indicated, to each of the following on this 17th of October 1994:

The Hon. John M. Frysiak*
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW
Room 223
Washington, DC 20554

Timothy K. Brady, Esq.
P.O. Box 986
Brentwood, TN 37024
Counsel to SBH Properties, Inc.

Robert Zauner, Esq.
Hearing Branch
Enforcement Division
Federal Communications Commission
2025 M Street, NW
Suite 7212
Washington, DC 20554



J. Richard Carr, Esq.

* Hand Delivery